

## Note on this document

This document (beginning on page 3) is a preliminary public draft of the code package which the Police Accountability Commission (PAC) will eventually recommend to City Council. The PAC will approve a City Code package to recommend to City Council by August 31, 2023.

This document is not a PAC decision or proposal. This document has not been discussed by the full Police Accountability Commission. The PAC will begin discussing this version at its August 10 meeting.

Additionally, items shown in highlights or track changes each are proposals to add or change text. As these proposals may have come from as few as 1 individual and the document has not yet been discussed, they do not necessarily reflect the views of the PAC or any previous PAC decision.

More information on the PAC's draft recommendations will be posted to <https://www.portland.gov/police-accountability> as versions are updated and supplemental materials are created.

For more information or to ask for comment from the PAC, please reach out to [policeaccountability@portlandoregon.gov](mailto:policeaccountability@portlandoregon.gov).

To give public comment to the PAC's membership, please either attend a public meeting or public hearing (upcoming calendar at <https://www.portland.gov/police-accountability/events>) or give written public comment at <http://tinyurl.com/portlandpaccomment>.

To sign up for email updates about the PAC, please go to <http://tinyurl.com/portlandpacupdates>.

DRAFT

## Chapter 35 Community Police Oversight Board

### 35A.010 Creation of City of Portland Community Police Oversight Board ("Board").

A. Portland City Charter Chapter 2, Article 10 has established the City of Portland Community Police Oversight Board. The name of the Board shall be the Community Board for Police Accountability ("CBPA" or "Board").

1. Reporting to the Board and established by this Code is the Office of Community-based Police Accountability ("OCPA" or "Office") which will be staffed with professional administrative staff and professional investigators. The Office shall be an independent Bureau of the City.

B. Purpose. The mission of the Board is to independently investigate Portland Police Bureau (PPB) sworn employees and supervisors thereof promptly, fairly, and impartially, to impose discipline as determined appropriate by the Board, and to make recommendations regarding police practices, policies, and directives to the Portland Police Bureau and with a primary focus on community concerns.

C. To the extent that any provision in this Code package (or any implementing rules) require bargaining, those provisions shall not go into effect unless and until the City exhausts its bargaining obligations with the PPA and PPCOA consistent with PECBA.

D. Board Commitment to Continuous Improvement.

The Board shall ensure qualified staff, a team or independent expert(s) examine the Board's performance, the Charter, City Code and Board policies, protocols on an ongoing basis. The Board may make recommendations to the appropriate decision-making bodies.

E. Other City advisory groups related to police and policing, whose functions incorporate officer accountability and/or policy recommendations, may independently and voluntarily seek to conclude operations and request that the oversight board assume their duties. This process would be initiated through mutual consent by the advisory group, the Board, and the bureau associated with the advisory group. Other details would be developed

36 between the incorporated group, following their voluntary choice to pursue  
37 incorporation, and the oversight board.  
38

- 39 F. No sooner than two years after the Board has begun receiving complaints from  
40 the public, it may undertake a review of all advisory groups related to  
41 oversight of police and policing, including communicating directly and  
42 transparently with volunteers serving on those groups, and may make  
43 recommendations to the Mayor and/or City Council regarding how the  
44 different aspects of the current oversight system will function, or cease to  
45 function, including how and when to wind down the current oversight systems.  
46
- 47 G. Prior to establishing any new advisory groups related to police or policing, the  
48 Mayor and/or City Council shall discuss the proposal with the oversight board  
49 and give sufficient time for a response.  
50
- 51 H. The Board shall have the authority to adopt bylaws, and as part of developing  
52 bylaws, it will decide, among other things:  
53
- 54 1. whether or not to establish a chairperson, co-chairs, or other leadership  
55 positions;  
56
  - 57 2. define the role of alternate Board members;  
58
  - 59 3. procedures that allow for the creation, management, and elimination of  
60 sub-committees; and  
61
  - 62 4. any other internal board procedures, including but not limited to those  
63 identified for elaboration in this Code and not otherwise addressed by law.  
64

## 35A.020 Definitions

In this Chapter:

A. **“Board”** refers to the Civilian Board for Police Accountability, the community police oversight board established under Charter 2-1001.

B. **“Office”** refers to the Office of Community-Based Police Accountability, an independent bureau of the City of Portland, whose Director is established under Charter 2-1005.

C. **“Oversight System”** refers collectively to the Board and Office.

In this Chapter, the following definitions are also used:

D. **“Accountability”**

A comprehensive system of checks and balances aimed at ensuring that when law enforcement fails to carry out their duties properly, including when their actions are damaging to other individuals or the community at large, they are held responsible through a fair and transparent process.

E. **“Case”**

An incident or situation involving potential misconduct by a sworn Portland Police Bureau (PPB) sworn employee or supervisor thereof. Cases are either complaints, which are filed by a community member or a PPB officer, or are incidents which the Board is required by law to investigate.

1. **“Complainant”** a person who has filed a complaint about misconduct, or has been the recipient of alleged misconduct even if they did not file a complaint.

F. **“Effective/Constructive Custody”**

The custody of a person who is not under direct physical control but whose freedom is controlled by legal authority.

G. **“Garrity warning” or “Garrity Notice”**: See “Lybarger / Garrity Notice” below.

An advisement given to a sworn officer who is the subject of an internal administrative investigation or review. This notice warning apprises the officer that they are required to answer questions asked by investigators and are

subject to discipline, up to and including termination, for failing or refusing to answer the questions.

H. **“Independent Judgment”** A demonstrable absence of real or perceived influence from law enforcement, political actors, and other special interests looking to affect the operations of the Office.

I. **“Just Cause”** is a cause reasonably related to the public safety officer’s ability to perform required work. The term includes a willful violation of reasonable work rules, regulations or written policies.

J. **“Law Enforcement Agency”**

Agencies that primarily employ police officers, corrections officers, or prosecutors.

1. This includes county sheriffs, municipal police departments, police departments established by a university, state police, tribal police, and law enforcement agencies of the federal government. It also includes district attorney’s offices. Finally, it includes correctional departments.
2. Agencies which perform duties related to investigating allegations of officer misconduct or reviewing police policies and practices, whose main function is not to engage in policing activities, are not considered law enforcement agencies under this definition.

K. **“Lybarger Notice” or “Lybarger Warning”**

See “Garrity Warning or Garrity Notice” above.

L. **“Panel”**

A subset of the Board’s full membership empowered to make decisions related directly to cases of potential administrative misconduct by PPB sworn officers and supervisors.

M. **“Preponderance of the Evidence”** is a standard of review in which a majority of evidence is required to support a finding on an allegation (applies to In Policy, Out of Policy and Unfounded findings).

N. **“Responsibility Unit Manager”**

A commanding officer or manager of a PPB division, unit or precinct.

O. **“Sentinel Event Reviews”**

Forward-looking, root cause reviews of undesirable police-related outcomes, designed to allow for the development of recommendations for preventing reoccurrence through continuous process improvements.

P. **“Sub-Committee”**

A subset of the Board’s membership empowered to take actions as defined in the Board’s bylaws, subject to review by the full Board.

DRAFT

**35A.030 Obligation to Follow Law**

In the performance of its duties, the Board is obligated to follow all applicable federal, state and local laws and rules, including but not limited to the United States Constitution and Oregon Constitution (and protecting the rights of all parties under both constitutions); City Charter; collective bargaining agreements (as per the Public Employees Collective Bargaining Act); *USDOJ v. City of Portland (Case No. 3:12-cv-02265-SI)* Settlement Agreement, including any amendments; Oregon public records and public meetings law, and as of July 1, 2025, statewide discipline guides.



### 35A.040 Status as Independent Bureau

- A. As specified by Charter, the Board and the Office of Community-based Police Accountability (“OCPA” or “Office”) will be an independent bureau. Collectively, these two entities comprise the Oversight System.
- B. The Board has an obligation to exercise independent judgment and offer critical analysis in the performance of its duties under this Chapter. The Oversight System shall exercise its responsibilities under this Chapter without interference from any person, group, or organization, including the Mayor, City Council, Auditor, City departments, Police Chief, bureaus, and other administrative agencies.
- C. The Board shall be operationally independent of the Portland Police Bureau (PPB) in all respects. To maintain the independence of the Board and PPB, the Board shall not hire current and former police officers as staff. The Board’s location and communications shall reflect its independence and impartiality.
  - 1. As a general matter, staff shall not seek administrative and legal guidance from the Police Bureau, unless necessary to perform their duties. In addition, as a general matter, staff shall not be trained alongside administrative investigators within the Portland Police Bureau (PPB), unless necessary to perform their duties.
- D. The physical office of the Board shall be located outside of a Portland Police Bureau facility.
  - 1. The Board and Office shall also not be housed in the same building as the Mayor, City Council, and any other agency that has a law enforcement or public safety component as part of its function.
  - 2. The Board and Office shall not be in a space where security is provided by law enforcement.
  - 3. The Board and Office shall be located in a location convenient for the public, including accessibility to public transit.
  - 4. The offices of the Board may be located in private office space.
- E. Notwithstanding its independent status, the Board shall develop working relationships with other parts of City government to ensure its ability to participate in relevant City processes related to the tasks required of the Board

197 by law or regulation. These include but are not limited to the Portland Police  
198 Bureau, Bureau of Human Resources, City Attorney's Office, and Office of  
199 Government Relations.  
200  
201

DRAFT

### 35A.050 Powers and Duties of the Board

The Board has the following duties and powers, as mandated by the Charter and by the authority of City Council:

- A. **Intake.** The Board shall receive complaints concerning police actions and select the appropriate manner to address the complaint consistent with this Code and Board procedure.
- B. **Initiate and conduct administrative investigations.** The Board is authorized to initiate and conduct administrative investigations that involve any of the following: 1) all deaths in custody and uses of deadly force; 2) all complaints of force that result in injury, discrimination against a protected class, violations of federal and state constitutional rights; and 3) other complaints or incidents of misconduct that are of community concern because of their impact on community members.
  1. For formal investigations conducted by the Board, investigation reports will include factual findings and will be resolved in one of four ways: 1) out of policy (meaning the action is found to have violated City policy; 2) in policy (meaning the member's actions were within the law and City policy; 3) unfounded (meaning the evidence shows the alleged events did not occur; and 4) insufficient evidence (meaning there is not enough information or evidence to determine if the member's actions were out of policy or in policy).
  2. The Board shall notify the Police Chief that it intends to conduct an administrative investigation into misconduct before initiating the investigation.
- C. **Communicate with Complainants.** The Board will be the primary contact with the complainant and the PPB officer or supervisor regarding the status and results of the complaint.
- D. Conduct hearings as described in Sections 35D.190 and 35D.200.

- 238 E. Hold Loudermill (due process) hearings as described in Section 35D.230.  
239
- 240 F. **Arrange hearings of appeals.** The Board will explain the appeal options to  
241 complainants and schedule hearings before an appeals panel as described in  
242 Section 35D.240  
243
- 244 G. Recommend policy changes. The Board shall have authority to make policy  
245 and directive recommendations including but not limited to the Portland Police  
246 Bureau and City Council as well as the inherent or implied authority to take  
247 other measures as necessary to effectuate this as described in Section 35E.010.  
248
- 249 H. Outreach. The Board will widely distribute complaint forms in languages and  
250 formats accessible to community members, educate them on the importance  
251 of reporting complaints, and hold public meetings to hear general concerns  
252 about police services.  
253
- 254 I. The oversight board shall have the authority to obtain information to  
255 administratively respond to allegations of misconduct, incidents which may  
256 involve allegations of misconduct, and conduct structural oversight effectively.  
257
- 258 1. Consistent with other provisions of this Code, the Board shall have the  
259 authority and ability to compel all evidence during the course of an  
260 investigation.  
261
- 262 2. Consistent with other provisions of this Code, the Board shall have the  
263 authority to compel sworn members of the Portland Police Bureau and  
264 their supervisors to participate in investigations and to completely and  
265 truthfully answer all questions. The Board is authorized to direct  
266 Portland Police Bureau members to cooperate with administrative  
267 investigations.  
268
- 269 J. Board access to information. In accordance with City, state or federal law and  
270 collective bargaining agreements, the Board shall have direct access to and be  
271 authorized to examine and copy, without payment of a fee, any PPB  
272 information and records, including confidential and legally privileged  
273 information and records so long as privilege is not waived as to third parties,  
274 and police databases.

- 275
- 276 1. Records includes but is not limited to PPB policies and directives, police
- 277 reports, body camera footage, Digital Information Management System
- 278 (DIMS), Versaterm Computer-Aided Dispatch (VCAD), or other, future CAD
- 279 systems, after action reports, training records, global positioning system
- 280 (GPS) data; discipline and complaint history of individual officers; and audit
- 281 records related to PPB.
- 282
- 283 2. Access to Police data and data sources. In order to perform its duties, the
- 284 Board shall also have access to Portland Police Bureau data and records,
- 285 including but not limited to raw data, tabulated summary statistics, other
- 286 source materials, and any other format source necessary for the Board to
- 287 perform its duties. The Board shall also have direct access to original
- 288 database sources (such as but not limited to Regional Justice Information
- 289 System (RegJIN) and Criminal Justice Information Systems (CJIS) as
- 290 permitted by state and federal law.
- 291
- 292 3. The Board shall also have direct access to all relevant database networks to
- 293 which PPB subscribes (such as but not limited to Regional Justice
- 294 Information System (RegJIN) and Criminal Justice Information Systems (CJIS)
- 295 as permitted by state and federal law.
- 296
- 297 a. The Board shall allot adequate funding from the Board's budget, using
- 298 the best estimate available, to fully pay for any fees the oversight board
- 299 incurs when accessing information from a non-PPB source.
- 300
- 301 4. The Portland Police Bureau must make available to the Board its records for
- 302 copying, inspection and access within five business days after a written
- 303 request from the Board. Consistent with the City Charter and this Code, the
- 304 Police Chief remains the custodian of record for all Portland Police Bureau
- 305 records. If the Police Chief (or designee) determine that specific records
- 306 requested by the Board pursuant to this section should be withheld or
- 307 redacted, the Portland Police Bureau must provide the Board with a written
- 308 explanation setting forth the specific records or reasonably segregable
- 309 portions of the records being withheld or redacted, the reason for the
- 310 withholding or redactions, and the legal justification supporting the
- 311 withholding or redactions. If the Board disagrees with the Police Chief's

312 decision to withhold records or redact information, the Board may seek  
313 disclosure through its subpoena power as defined by the Charter and this  
314 Code.

315  
316 5. The Board shall ensure that staff who access PPB records described above  
317 are trained and certified to do so.

318  
319 6. All body camera footage of every event that is made available to the Board  
320 pursuant to this section shall be available in full without any editing or  
321 tampering and will be verified for authenticity.

322  
323 The oversight board shall maintain confidentiality where required to do so and  
324 support transparency where allowable. The Board shall not disclose  
325 confidential or legally privileged information or records and shall be subject to  
326 the same penalties as the legal custodian of the information or records for any  
327 unlawful or unauthorized disclosure.

328  
329 K. As a separate source of information for the Board's administrative  
330 investigations, the Board shall have access to PPB officers' statements from any  
331 criminal investigation, as well as relevant police reports. Information shared  
332 pursuant to this provision will not be done in a way that undermines or  
333 interferes with an ongoing criminal investigation or prosecution or impacts the  
334 member's Garrity rights.

335  
336 L. Attend Portland Police Bureau Trainings. The Board shall have access and be  
337 authorized to attend PPB trainings as observers for the purpose of evaluating,  
338 monitoring and making recommendations to PPB regarding policy and  
339 directives.

340  
341 M. Adoption of bylaws. The Board is empowered to write its own bylaws covering  
342 its internal processes not addressed in law.

343  
344 1. Establish sub-committees as appropriate.

345  
346 N. Adoption of rules. The Board shall adopt, promulgate, amend and rescind  
347 rules and procedures required for the discharge of the Board's duties, including  
348 policies and procedures for receiving and processing complaints, conducting

investigations, and reporting findings, conclusions and discipline procedures. The Board may also adopt rules and procedures for making raw data available to the public. However, the Board may not levy any fees for the submission or investigation of complaints.

O. Review of closed investigations. The Board shall hire a qualified staff member, a team, or independent expert(s) to review closed investigations pertaining to officer-involved shootings, deaths in custody and uses of deadly force that do not result in death on an ongoing basis.

1. For purposes of this section, “closed investigation” shall mean that the investigation has been completed, any discipline arising from the incident has been issued and the involved member(s)’ grievance and appeal rights have been exhausted.
2. Consistent with applicable law and collective bargaining agreements, the completed reviews of these closed investigations shall be described in periodic reports available to the public and include case and investigative summaries, policy implications, recommendations for improvements in police and Oversight Board policies or practices.
3. These deadly force reports will be presented to the public and City Council. Contemporaneous public testimony, including oral testimony, will be accepted at City Council sessions.

P. The Board will publish a written annual report with an Executive Summary by a consistent date each year. The report will be presented at a public meeting of the Board with public comment and questions encouraged. The annual report will also be presented at a public City Council session with oral testimony accepted.

1. The Annual Report shall include the following information:
  - a. Overview of the Board, its staff, and its functions;
  - b. Summary of recommendations submitted by the Board to the Police Bureau and/or City Council regarding changes to policy, directives or City Code along with status and outcomes (accepted/rejected/modified) for each listed recommendation;

- c. A status update on implementation for those policy recommendations (with an emphasis on persistent community concerns) which are accepted in whole or in part by the Council or Police Bureau;
- d. Recommended changes to collective bargaining agreements (if applicable) and state law;
- e. Analysis of closed case reviews;
- f. Summary of complaints received by the Board over the year (including as applicable and as consistent with the law, the named employee, nature of allegations, type, casehandling decision, findings and discipline imposed);
- g. Number of employees who have received two or more complaints where their actions were deemed out of policy within one year;
- h. Number of complainants who filed multiple complaints, and issues that were raised by multiple complaints;
- i. Demographic profiles of the complainants to the extent that information exists or is voluntarily provided by the complainants;
- j. Number and percentage of cases that were appealed to the Board and the outcomes (i.e., whether the findings or casehandling decision changed);
- k. Number and percentage of cases that were resolved by informal resolution (including mediation) and the outcomes;
- l. Number and percentage of cases referred to mediation
- m. Number of discipline decisions that were grieved under the applicable collective bargaining agreement or appealed to the Civil Service Board and outcome;
- n. The number and percentage of all complaints handled directly by frontline supervisors, referred for Supervisor Action, Management Action, training or alternative resolution;
- o. Number of times a PPB employee failed to comply with the Board's request for an interview or for the production of documents, and the number of times a PPB sworn employee failed to comply with a valid subpoena, and whether discipline was imposed for any such non-compliance;
- p. Number, nature, and settlement amount of civil suits against PPB officers regardless of whether the City is a defendant in the litigation;
- q. Number of cases involving either uses of deadly force or deaths in custody;



- r. Number of cases in which the Board failed to complete its administrative investigation within 6 months of receipt of a complaint of misconduct, or discovery of misconduct by other means as specified in Code Sections 35D.010 through 35D.240;
- s. Identification of trends with respect to officer history, complaint types, and frequency, consistency and adequacy of discipline imposed; and
- t. Complainant satisfaction survey results and community feedback.

2. In addition to the its Annual Report, the Board may issue quarterly reports to Council.

Q. Public Access to Raw Data. The Board shall make raw data available for download, inspection and analyses by members of the public. "Raw Data" shall be redacted as consistent with the law and shall include as applicable complaints, casehandling decision, findings, discipline, complainant demographics and geographic origin of complaint.

R. The Board shall develop interactive dashboards around the oversight data so that it can be visualized in different ways. The Board may also display policy recommendations in a dashboard.

S. Conduct investigative interviews of Portland Police Bureau employees, consistent with applicable collective bargaining agreements.

- 1. All PPB employees shall be truthful, professional, and courteous in all interactions with the Board. No member shall conceal, impede, or interfere with the filing, investigation or resolution of a complaint.

T. The Board may obtain legal advice and representation from the City Attorney or may retain or employ independent legal counsel. If the Board retains or employs independent legal counsel, the Board shall be the client and is entitled to the benefits and privileges thereof.

U. Establish a standard by which the Portland Police Bureau reports data to the Board, including required aggregated information (e.g. use of force cases) and frequency (e.g., monthly, quarterly, annually).

V. The Board may retain or employ independent experts, including law enforcement experts, as needed to advise on any matter under investigation, review, or evaluation by the Board.

W. Maintain Working Relationships.

1. The Board shall maintain working relationships with other parts of City government, and collaborate with those entities to ensure there is no duplication of names and titles, processes and terminology.
2. The Board and Office will maintain a working relationship with the PPB Professional Standards Division, including staff working on the Employee Information System (EIS).
3. The Board and Office shall maintain a working relationship with other advisory committees related to police and policing. Representatives from the oversight board and other advisory committees will meet periodically in public to discuss emerging issues and policy concerns they have encountered in the course of their work. If meetings are not practical, at a minimum they will share by email or other means information on those topics among themselves. This information will be reported back to members of the various advisory committees. They may choose to create joint study committees to research those issues and develop joint recommendations.
4. Other Law Enforcement Agencies. The board recognizes that maintenance of the following working relationships will be beneficial to the Board fulfilling its duties due to police collaborations and joint operations, and police activity with relation to jails, prisons and detention centers.
  - i. The Board and Office shall maintain a working relationship with the Multnomah, Clackamas, and Washington Counties' Sheriff's Offices, as well as each county's corrections agencies, medical examiners' offices, and with oversight groups for those entities.

- 496 ii. The Board and Office may seek membership for a representative  
497 in Multnomah County's Local Public Safety Coordinating Council  
498 (LPSCC), to assist with developing working relationships and  
499 exchanging information in pursue of oversight goals and  
500 responsibilities.  
501
- 502 iii. The Board and Office shall maintain a working relationship with  
503 the Oregon State Police (OSP), including the State Medical  
504 Examiners' Office, as well as the Department of Corrections (DOC),  
505 and with oversight groups for these entities.  
506
- 507 iv. The board shall also maintain a working relationship with law  
508 enforcement agencies outside of the Portland Police Bureau,  
509 including but not limited to those municipalities whose law  
510 enforcement officers may interact with community members in  
511 Portland, TriMet police, and private security agencies serving in  
512 public spaces while acting in an official or unofficial law  
513 enforcement capacity.  
514

515 5. Coordination with District Attorneys' Offices.  
516

- 517 i. In instances where officer misconduct that is investigated by the  
518 Board also results in criminal complaints alleging criminal  
519 misconduct by officers, the Board shall coordinate to the extent  
520 allowable under law with the Multnomah, Clackamas, and  
521 Washington County District Attorneys' Offices, including  
522 information sharing where appropriate, which may include access  
523 to court records and case information pertinent to complaints  
524 under Board investigation. To ensure officers' constitutional rights,  
525 in no case shall compelled testimony from officers be transferred  
526 to any prosecutors' offices.  
527
- 528 ii. The oversight board, working through legal counsel, shall  
529 coordinate with the District Attorney's offices to determine  
530 appropriate disclosure of requested public records, and protection  
531 of confidential information, including through clarifying and  
532 appeal to the District Attorney's offices.

- 533
- 534 6. Sharing of Information with DPSST. The Board and Office shall also
- 535 maintain a working relationship with the Department of Public Safety
- 536 Standards and Training (DPSST), including in a manner consistent with
- 537 applicable law, sharing information about cases in which officers were
- 538 found to have committed misconduct and cases in which a finding of
- 539 “training failure” was reached. This relationship shall benefit the
- 540 community by promoting improvement in training and performance of
- 541 officers.
- 542
- 543 7. The Board and Office shall maintain a working relationship with the state
- 544 Employment Relations Board (ERB). This relationship will be beneficial to
- 545 the oversight board for understanding arbitration and its role in the
- 546 process of addressing allegations of officer misconduct.
- 547
- 548 8. Criminal and Civil Proceedings Involving Officer Misconduct. In instances
- 549 where officer misconduct that is investigated by the Board also results in
- 550 criminal complaints alleging criminal misconduct by or civil lawsuits
- 551 against officers, the Board shall cooperate with these judicial
- 552 proceedings to the extent requested and as permitted by law. To ensure
- 553 officers' constitutional rights, in no case shall compelled testimony from
- 554 officers be transferred to any prosecutors' offices.
- 555
- 556 X. Alone or in cooperation with other city agencies/bureaus, Board staff will also
- 557 audit police surveillance and other technologies. Relevant data from these
- 558 audits will be posted online including on online dashboards.
- 559
- 560 Y. The Office may reach outside city structures to complete its work. The Board
- 561 and Office may consider working with law school faculty and/or students or
- 562 other community resources. The Director will establish internal procedures.
- 563
- 564

### 35B.010 Oversight Board Membership

A. The Board shall consist of thirty-three members.

1. The Board shall also have no less than five alternates, selected by the Council from individuals who apply for Board membership and meet the qualifications included in this Code section.
2. Whenever there is a vacancy on the Board, Council will select a successor Board member from among the current alternates.
3. Alternates may not serve on panels reviewing complaints, nor are they considered voting members of the Board. However, the Board may define other responsibilities and rights of alternates in its bylaws.

B. Individual board members and alternates shall be appointed to the Board by a vote of the full City Council.

1. Individual applications shall be referred by the Board to City Council based upon its review of the qualifications and selection criteria (below).
2. Council shall review applications of nominees to the Board and vote on whether to approve each appointment within 45 days of receiving the nomination.

C. **Quorum Requirements.**

1. **Matters Affecting Full Board:** A simple majority of board seats shall constitute a quorum of the Board for decisions about procedures, protocols, or other decisions affecting the full board.
2. **Adoption of Bylaws or Other Significant Matters Affecting Full Board:** A quorum for purposes of adopting bylaws or other significant matters (including a proposed recommendation to Council to remove a Board member), the quorum shall be two-thirds of Board seats.

601 3. **Panels (Hearings, Due Process and Appeals):** Quorum for panels shall be a  
602 majority of the members of the panel.

603  
604 4. **Sub-Committees:** Sub-Committees established by the Board shall have a  
605 defined number of members as established by the Board. A simple majority  
606 of Sub-Committee members shall constitute a quorum.

607  
608 D. Board members shall be appointed as follows:

609  
610 1. At a minimum, Board staff shall solicit applications to fill vacancies in the  
611 Board's membership from the Office of Equity and Human Rights, Office of  
612 Community and Civic Life, the Neighborhood Coalition offices, Mayor and  
613 Council offices, other PPB-focused advisory committees, community  
614 organizations that focus on disciplines important to the Board's work (such  
615 as those working on racial justice, mental health advocacy, and houseless  
616 organizing, nonprofits, other grassroots organizations and others), and the  
617 general public. After review based on the evaluation of each applicant  
618 against the listed qualification and selection criteria for Board membership,  
619 qualified applicants shall be referred to City Council for consideration and  
620 possible appointment.

621 a. The Board may create a nominating committee to review applicants for  
622 board membership prior to referring to the City Council for  
623 consideration for appointment. The nominating committee may include  
624 individuals who are not current board members.

625  
626  
627 2. **Qualifications and Selection Criteria:** Prospective applicants shall be  
628 considered for vacancies on the Board based upon the following  
629 qualifications and selection criteria:

630  
631 a. Individual Board members must live, work, play, attend school or  
632 worship in the City of Portland for at least twelve months prior to their  
633 appointment.

634  
635 b. Board members must be representative of Portland's diverse population,  
636 drawn from different socio-economic backgrounds and racial, ethnic,  
637 gender identity, and age groups. In order to allow the Board to fulfill its

responsibilities, some members shall represent or be knowledgeable of those who (1) have encountered systemic racism; (2) have been impacted by over-policing policies; (3) have mental illness, or substance abuse disorders or (4) are houseless. In filling Board vacancies from alternates, consideration shall be given to the current composition of the Board and appointments should be made that will cause the Board to best reflect the demographic make-up of Portland to the extent possible.

- c. The Board shall include people experienced with community outreach; law enforcement practices; law enforcement oversight; police accountability; investigative procedures; case-handling and audit procedures; constitutional, criminal, or labor law; social justice; advocating for and providing service to houseless community members; or other relevant professional experience. Altogether, there shall be a balance that allows the Board as a whole to benefit from the knowledge and expertise of its individual members.
- d. Individual board members must have a commitment to the need for and responsibilities of civilian police oversight in ensuring that Portland policing practices comply with state and federal constitutional protections and other applicable law. Individual board members must also have a demonstrated commitment to racial justice.
- e. Board members must be capable of making fair and impartial decisions based on the evidence presented to them in an environment where controversy is common. Fairness includes considering lived experience, the experiences of the community members, and of the police officers involved in the case.

### 3. Prerequisites for Appointment:

- a. A prospective Board member must comply with ORS Chapter 244 (Government Ethics) and Portland City Code Chapter 1.03 (Code of Ethics) and disclose at the time of their application any potential or actual conflicts of interests.
- b. The Board member must sign a confidentiality agreement.

675  
676 c. Background Check.  
677

678 i. Prior to a Board member being seated, staff shall initiate a  
679 criminal background check through an agency other than the  
680 PPB, or an agency used by PPB for its checks.  
681

682 ii. The nominating entity shall discuss any previous conviction,  
683 where the substance of the offense would substantially  
684 negatively affect their ability to perform their duties if  
685 appointed, with the prospective board member about how  
686 they would respond to concerns that they're not able to be  
687 impartial in discharging their duties.  
688

689 iii. The nominating entity may opt not to pass an applicant's  
690 nomination to City Council after this conversation.  
691

692 iv. Convictions which do not substantially negatively affect the  
693 applicant's ability to perform their duties if appointed will not  
694 be considered by the nominating entity.  
695

696 4. Restrictions on Board Membership. The following individuals are not  
697 eligible for service on the Board:

- 698 a. An individual currently employed by a law enforcement agency;  
699  
700 b. An immediate family member of an individual currently employed by a  
701 law enforcement agency;  
702  
703 c. An individual formerly employed by a law enforcement agency;  
704  
705 d. An individual who is currently a member of any other government-run  
706 advisory group, board or commission related to law enforcement or law  
707 enforcement accountability.  
708

709 E. **Training Requirements.** A Board member (and alternates) shall complete these  
710 training requirements within six (6) months of appointment, unless they can  
711 show good cause for having not done so:



1. Complete all paperwork necessary to ensure access to City resources, including compensation and other support services;
2. Complete orientation and training applicable to all members of a City advisory body;
3. Become familiar with the City Charter Chapter 2, Article 10, chapters of this Code, that address the Board's roles and responsibilities;
4. Receive training on the Board's history, internal structure and processes (including bylaws, and rules and procedures);
5. Receive training in the legal requirements of Oregon's Public Records and Public Meetings laws;
6. Receive training about the Portland Police Bureau, including the following: its history, procedures, the relevant provisions of the City's collective bargaining agreements with the Portland Police Association ("PPA") and Portland Commanding Officers Association ("PPCOA") and as applicable other represented City employees; and receive a briefing on the settlement agreement in the case of *United States v. City of Portland*, Case No. 3:12-CV-02265-SI, all related court orders for so long as they remain in effect and a discussion of the historical policing practices addressed in the litigation;
7. Training about how civilian oversight of law enforcement functions;
8. Training about the City's Civil Service Board, and other relevant City personnel policies and procedures;
9. Receive training in basic principles of constitutional due process, constitutional civil rights guaranteed to all citizen as such rights are affected by law enforcement and administrative hearing procedures;
10. Receive training in the legal requirements for maintaining the confidentiality of personnel records and other confidential documents or information.

The Oversight Board shall review its own training structures and curriculum on a regular basis and may revise these training requirements, including establishing a peer training component and establish a list of responsibilities and topics to be covered during peer training.

**F. Term Lengths and Renewability.**

1. Board members shall each serve a term of three years, subject to reappointment by Council.
2. Upon expiration of the term, a Board member shall serve until re-appointed or replaced or removed by Council.
3. A Board member may apply to renew their term twice, and will be considered for the position. The Board will establish procedures to allow Board members to seek reappointment.
4. Board Member Leave of Absence. A Board member may be granted a leave of absence, if needed, for good cause, including in instances of illness or injury or other personal hardship.

### 35B.020 Resignation and Removal from Board

A. A Board member may resign prior to the expiration of their term with written notice to the Board and the Council.

1. A board member seeking election or appointment to a public office shall inform Board leadership of their intent to seek office. A board member seeking election or appointment to a public office that will give rise to a conflict of interest shall resign their board membership at the time of their appointment or election. Depending upon the position which they are pursuing, the board member may be required to disclose a conflict of interest upon their decision to run for office or seek appointment. An individual board member who resigns to seek other public office may re-apply for a future Board vacancy upon conclusion of holding the other public office.

2. Upon this notification, the Council must consider the position vacant and eligible for the Council to appoint a new member from the alternates to serve for the remainder of the vacating member's term. In filling Board vacancies, consideration shall be given to the current composition of the Board and appointments should be made that will cause the Board to best reflect the demographic make-up of Portland to the extent possible.

B. City Council may remove a board member for cause.

1. A member must immediately notify the Board and cease further participation on the Board, pending a vote of removal by the Council, if any of the following circumstances occur during the member's term:

a. the member is incarcerated in any jail or prison and unable to complete their responsibilities as a Board member; or

b. the member is convicted during the member's term of (a) a felony; (b) a felony or misdemeanor which requires the member to register as a sex offender pursuant to ORS Chapter 163A; (c) a criminal violation of state or local conflict of interest laws; or (d) a criminal violation related to

806 fraud; or (e) a felony or misdemeanor for a domestic violence related  
807 offense.  
808

809 2. The Council's consideration of the removal and replacement of the member  
810 pursuant to this section must occur within 45 days following the Council's  
811 receipt of notice under this subsection.  
812

813 3. Cause for removal includes but is not limited to:  
814

815 a. Official Misconduct (See ORS 162.405-162.415);  
816

817 b. Unexcused absence;  
818

819 c. Excessive excused absences (including unforeseen events, health  
820 reasons, being out of town, or missed meetings due to conflicts of  
821 interest);  
822

823 d. Failure to timely disclose an actual conflict of interest which prevents the  
824 Board member from performing their responsibilities;  
825

826 e. Loss of eligibility: No longer meeting any of the requirements such as  
827 live, work, play, attend school, or worship in the City of Portland (as  
828 outlined in Code section XX);  
829

830 f. Unmet minimum participation, or workload requirement;  
831

832 g. Breach of confidentiality agreement;  
833

834 h. Inactivity in board activities including subcommittee work or hearing,  
835 appeals, misconduct, or due process panel participation  
836

837 i. Failure to complete training within 6 months of appointment unless  
838 good cause exists to excuse this;  
839

840 j. Misconduct, such as harassment, discrimination, and retaliation; or  
841

842 k. Any other cause which impacts the Board's effective operations,  
843 standing or independence.

844  
845 4. Other reasons for removal could include death, or incapacitation.

846  
847 C. The Bureau of Human Resources shall investigate allegations of misconduct  
848 regarding board members, and communicate their findings to the Oversight  
849 Board. In instances where the complaint of misconduct is sustained, Council  
850 may remove a member.

851  
852 D. Removal of a board member prior to the end of their term requires a majority  
853 vote of City Council. Removal of a board member may occur upon a  
854 recommendation from BHR, a recommendation of the Board, or upon Council's  
855 own motion. The Board retains discretion to suspend a member, or place them  
856 on leave, pending action by Council.  
857

**35B.030 Meetings of the Board**

In conducting its meetings and hearings, the Board shall comply with all requirements of Oregon Public Meetings Law (ORS 192.610 through 192.710).

- A. Proper notice, agendas, meetings summaries, and meeting materials will be made available to the public in a timely way.
- B. The Board shall hold regular meetings open to the public and offer time for community input, include through public comment, testimony, or other means. Public comment will be allowed, at a minimum, before key decisions are made, provided doing so is consistent with applicable law.
- C. The Board may also hold special meetings of the full Board or sub-committees as necessary.
- D. The Director will provide written updates at full Board meeting with information on the status of investigations and of those conducted by the Police Bureau.
- E. The Board will regularly host the Police Chief, Mayor and other relevant officials at its public meetings.
- F. While matters may be addressed in executive session, consistent with the law, any final action or final decision by the Board shall be made in open session.

**35B.040 Board Budget**

- A. The Board shall have a publicly disclosed budget.
  - a. As per Charter 2-1004, “funding for the Board shall be proportional to no less than 5 percent of the Police Bureau’s Annual Operations Budget.”
  - b. The Board will have discussions in public about how to allocate its budget, and, at its discretion, may appoint an independent budget advisory committee from the community.
- B. After evaluation of its budget, the Board shall be able to request a larger budget allocation as part of the City’s annual budget process.
- C. The Director shall comply with the City’s purchasing procedures and except as otherwise provided here, the Director shall have sole discretion in choosing staff persons, contractors and other employees and in making other decisions about expenses. The Board may require that the Director make certain hiring/purchasing decisions only with the Board’s approval.

### 35C.010 DIRECTOR SELECTION AND REMOVAL

- A. The Board shall hire a Director for the Office of Community-based Police Accountability (“OCA” or “Office”) who shall be appointed by, and serve at the will and pleasure of the Board. As specified by Charter, and consistent with these procedures, the selection process for the Director shall be done through a community process led by the Board.
- B. The Board shall select the Director of the OCA, in accordance with the City's human resource policies and rules and any other applicable laws, by the following process:
1. A subset of the Board (“Hiring committee”) shall work with the Director of the Bureau of Human Resources (BHR) or designee to create a job posting that comports with the necessary and desired qualifications for a Director;
  2. In coordination with the Bureau of Human Resources, the Hiring Committee shall assess minimum qualifications by screening applicants and resumes, and the Hiring Committee shall select at least three candidates best qualified to interview. The Hiring Committee may choose to involve community members in the screening process.
  3. The full Board shall interview the candidates and the top scoring candidate will be moved forward;
  4. At that meeting or the next appropriate meeting, the Board shall vote whether to appoint the top scoring candidate;
  5. If the top candidate is not appointed, then the Hiring Committee shall present the next top scoring candidate to the Board for consideration and a vote. The selection process shall continue as stated until the Board votes to appoint a candidate as the Director; this shall include reopening the recruitment process if none of the interviewed candidates are appointed.
- C. The hiring procedures described in section B, above, are intended to comply with ORS 192.660(2)(a).



939 D. Director Qualifications.

940 At a minimum, the Director shall possess the following necessary and desired  
941 qualifications:

- 942
- 943 1. Be well-equipped to analyze problems of administration, and public policy;
  - 944
  - 945 2. Shall have a working knowledge in criminal justice sufficient for the powers  
946 and duties of the Office;
  - 947
  - 948 3. Experience and knowledge should also include working with communities  
949 impacted by police misconduct; and
  - 950
  - 951 4. The Director shall possess other necessary and desired qualifications for the  
952 position as identified by the Board.
  - 953

- 954 E. The Director shall serve at will and may be removed from office by a vote of a  
955 supermajority of the Board (to be determined by the Board according to its  
956 procedures). The decision of whether to remove a Director shall be in the  
957 Board's sole discretion and may be for any reason.  
958

### 35C.020 DIRECTOR ROLES, RESPONSIBILITIES & DELEGATION

- A. The Director shall manage the professional administrative staff and professional investigators, and make operational and administrative decisions for the Office.
- B. The Director may appoint other personnel necessary to carry out the duties of the Office, keeping within the adopted budget for the Office.
  - 1. The Director shall hire an auditor/monitor/inspector-general, who will be in charge of auditing records and other aspects of the accountability system.
    - a. Audits conducted by staff will include but not be limited to police practices, policies, training, and directives, including regular audits of police communications with the public (news releases, social media, etc.).
    - b. Board members will be involved in the hiring of the auditor/monitor/inspector-general.
  - 2. The Director shall hire legal counsel to provide legal advice for the Board and staff separate from the City Attorney's office.
    - a. Board members will be involved in the hiring of legal counsel.
  - 3. Professional staff of the Oversight System, shall be appointed by and serve under the direction of the Director. The Director shall hire part or full-time staff members focusing exclusively or in a combination on the following:
    - a. Policy work;
    - b. Mediation;
    - c. Investigation;
    - d. Hearings support;
    - e. Records;
    - f. Outreach/Community Engagement;
    - g. Intra-governmental affairs;

- 996 h. Data analysis;  
997 i. Equity and inclusion;  
998 j. Public affairs/communications; and  
999 k. Other administrative staff and personnel as necessary for the Board and  
1000 Office's functioning, including to assist Board members.  
1001
- 1002 C. The Director shall ensure that a qualified staff person goes directly to the scene  
1003 of an officer deadly force incident and other incidents which may involve police  
1004 misconduct needing immediate attention.  
1005
- 1006 D. The Director shall protect the confidentiality of Board members, complainants,  
1007 officers, and witnesses consistent with the requirements of Oregon Public  
1008 Records law. Consistent with the law, disclosures may be necessary to enable  
1009 the Director to carry out their duties, to comply with applicable collective  
1010 bargaining agreements, where the public interest requires disclosure in a  
1011 particular instance, or other reasons consistent with the law.  
1012
- 1013 E. The Director is authorized to adopt, amend, and repeal rules, procedures, and  
1014 forms to implement the provisions of this Chapter including for the discharge  
1015 of duties, including policies and procedures for receiving and processing  
1016 complaints, conducting investigations and hearings, and reporting findings,  
1017 conclusions and recommendations. All such policies shall be sent to the Board  
1018 for its review and feedback prior to beginning public comment period (if  
1019 applicable).  
1020
- 1021 1. Before adopting, amending, or repealing a rule, the Director must notify  
1022 interested parties and hold a public comment period. Such notice, which  
1023 may be provided by mail or electronic means, such as posting on the  
1024 Office's website, must be published at least 4 weeks before the close of the  
1025 public comment period. The notice must include instructions on how an  
1026 interested party may comment on the proposed rule, a brief description of  
1027 the subjects covered by the proposed rule and how to access the full text  
1028 of the proposed rule.  
1029
- 1030 2. During the public comment period, the Director will receive written  
1031 comments concerning the proposed rule. At the conclusion of the public  
1032 comment period, the Director will either adopt the proposed rule, modify

1033 it, or reject it, taking into consideration the comments received. If a  
1034 substantial modification is made, an additional public comment period will  
1035 be held. Unless otherwise stated, all rules are effective upon adoption by  
1036 the Director. Copies of all current rules will be posted on the Office's  
1037 website.  
1038

- 1039 3. Notwithstanding Subsections 1. and 2., the Director may adopt an interim  
1040 rule without prior public notice upon a finding that failure to act promptly  
1041 will result in serious prejudice to the public interest or the interest of the  
1042 affected parties, stating the specific reasons for such prejudice. An interim  
1043 rule adopted pursuant to this Subsection is effective for a period of not  
1044 longer than six (6) months. The Director may extend the interim rule past  
1045 the six (6) months for good cause, as determined in the Board's sole  
1046 discretion.  
1047

- 1048 F. The Director may delegate to a designee any or all duties or responsibilities.  
1049

### 35C.030 Staff Training and Qualifications

A. Staff shall be trained on issues specific to their roles, such as:

1. PPB and Board policies and directives,
2. Interviewing,
3. Evidence,
4. PPB patrol training and tactics,
5. PPB and Board operations,
6. Legal issues including stops, frisks, and searches.
7. Trauma-informed service delivery, focused on interviewing and other community interactions.
8. Cultural competency; and
9. Other training needs as identified by the Director.

B. Minimum experience requirements. While the Director has authority in hiring staff, the following shall be considered in their hiring process:

1. The Director, in consultation with the Bureau of Human Resources including evaluating experience requirements of comparable positions, may specify a minimum number of years of experience required for position, such as investigators. The minimum number of years of experience shall not exceed five years, and the experience requirement should not be a barrier to consideration of otherwise qualified applicants.

C. Preferred qualifications for Office staff shall include working with community; being versed in contemporary legal topics related to policing; public defense or civil rights backgrounds; and investigative, policy, and/or management skills. Investigative backgrounds can include Child Services, personnel, safety, housing, and medical and insurance investigations.

**35C.040 Staff community engagement**

- A. The Board shall conduct public education on the role of the oversight system and community members' rights, keeping the community informed of its activities, how to file complaints and seek recourse in case of retaliation, and receive input.
- B. Where appropriate, oversight staff shall train trainers who can go into specific communities and train in ways that work for those groups, in addition to the Board training the public at large directly.
- C. Staff shall set up community engagement events, which may involve the Board members when available.
- D. The outreach shall be conducted in ways that are accessible in terms of language, abilities, and other considerations.
- E. Communities to engage shall include youth and community partners, immigrant communities including people of undocumented status, people with mental illness, and other communities disproportionately affected by police misconduct.
- F. Outreach locations shall include but not be limited to schools, libraries, community organizations, neighborhood meetings, and organizations serving the houseless population.
- G. Community engagement shall include discussions on how to improve police practices and policy, which includes soliciting community input. These discussions may include local, state, and federal laws and policies, not solely Police Bureau policies.

### 35D.010 Basic elements of Administrative Investigations

- A. Beyond the basic elements listed here and in other parts of this Code, the Oversight System shall develop investigative procedures to provide guidance for staff operations and shall train staff on these procedures.
  - B. Investigations shall comply with federal and state constitutions and laws, city charter, Oversight System rules and regulations including Administrative Rules adopted by Bureau (ARBs), relevant collective bargaining agreements, and the National Association for Civilian Oversight of Law Enforcement (NACOLE) ethics code.
  - C. In all investigations involving Officer Involved Shootings and other cases which may involve criminal misconduct, officers shall receive Garrity warnings that they are being compelled to testify for administrative investigation, and the content of the interview cannot be used in a criminal proceeding.
  - D. Investigations must be conducted in a manner that is ethical, independent, thorough, timely, fair, and impartial.
  - E. Investigations shall include, if these elements exist and are reasonably available:
    - 1. When an investigation begins, an officer shall be informed in writing:
      - a. of the nature of the investigation;
      - b. whether the officer is a witness or an involved party; and
      - c. other information necessary to reasonably inform the involved officer of the nature of the allegations, including the time, date, and location of the incident (if known).
    - 2. Interviews of the complainant, officer(s), and witness(es);
- However, no information that would compromise the integrity of the investigation shall be shared with the involved officer.

- 1150
- 1151 3. Gathering evidence including photos, videos, proof of injuries and other
- 1152 relevant medical records;
- 1153
- 1154 4. Examining police roll calls, logs, assignments, and other relevant
- 1155 information; and
- 1156
- 1157 5. Site visits as deemed appropriate.
- 1158

1159 F. Interview Guidelines:

- 1160 1. Interviews with officers shall all be recorded and conducted in a manner
- 1161 that is consistent with the applicable collective bargaining agreement.
- 1162
- 1163 2. Interviews with community members will be recorded, unless the
- 1164 community member requests not to be recorded. In these instances, the
- 1165 request by the community member shall be documented, and a
- 1166 stenographer will be enlisted to ensure the interviewee's answers are
- 1167 captured accurately.
- 1168
- 1169 a. However, a community member concerned about confidentiality of
- 1170 certain information may request that parts of their transcript be
- 1171 redacted for confidentiality purposes, so long as the redaction does
- 1172 not interfere with the ability to fully investigate or the due process or
- 1173 other contractual rights of the officer. In these cases, the City shall
- 1174 treat the information as submitted confidentially to the extent
- 1175 permitted by law.
- 1176
- 1177 3. Civilian interviews can take place at locations other than the oversight
- 1178 system's offices.
- 1179

- 1180 G. An investigation shall be completed even if an officer retires, resigns, or is
- 1181 terminated.
- 1182

- 1183 H. The Board will investigate complaints submitted anonymously and complaints
- 1184 with unidentified officers to the full extent possible, and if necessary and in a
- 1185 manner consistent with other provisions of this Code and collective bargaining
- 1186 agreements, left open pending identifying the person(s) involved as needed.



- 1187  
1188 I. If during the investigation, investigators decide that there is not enough  
1189 information to finish the investigation, the investigator shall close the  
1190 investigation on this basis. (This is considered a “decision not to investigate”)  
1191 The complainant has the right to appeal that finding as outlined in this Code  
1192 (35D.240) by providing further information.  
1193  
1194 J. Staff shall review all misconduct investigations to ensure they are complete  
1195 before they are sent to the Board to make findings and determine discipline.  
1196

DRAFT

**35D.020 Timelines for Completion**

A. Investigations shall be completed within 6 months. Investigations may extend past 6 months consistent with applicable law.

1. If investigators are unable to meet these timeframe targets, the staff shall undertake and provide a written review of the process for the Board to identify the source of the delays and implement an action plan for reducing future delays.

B. Informal complaints shall be resolved in 60 days or less.

C. The timeline listed in paragraph (A) and (B) may be extended if more time is needed, including at the request of a complainant and/or their attorney, consistent with applicable law.

D. The investigative staff shall inform the Board, the complainant (and their assigned complaint navigators) and the officer(s) (and their support persons) if an investigation goes beyond the mandated timeline. They shall also inform the officer's supervisor, the Chief and Mayor.

B. Investigations related to use of deadly force, and deaths in custody, shall be prioritized for completion.

### **35D.030 Providing information to complainants**

- A. During intake, the complainant shall be informed of any obligations the Board may have to report something that is stated to them as part of a complaint and to provide the complaint itself to the involved officer where required by law or collective bargaining agreement. Except as otherwise required by law, the Board shall not turn over any admission of civil violations, criminal conduct, or criminal intent unless there is an imminent threat of harm to the complainant or others. That part of the investigation or interview which could incriminate the complainant in criminal proceedings will be considered confidential.
1. During intake, staff shall not express opinions about the complainant or the truth or merit of their allegations.
  2. However, if the staff conducting intake has some kind of bias or conflict regarding the complaint, complainant, or nature of the allegations, they shall disclose that bias to their supervisor. At that point, the Director or designee shall assign another staff member to complete the intake.
  3. If they perceive bias, complainants may request another staff person to complete the intake.
- B. The Board shall provide Complainants with records of their complaint, including:
1. Confirmation of the receipt of the complaint, including a summary of the allegations;
  2. Literature about the Board and its process including explanation of confidentiality issues;
  3. If appropriate, a medical release form for records related to the complaint;
  4. Notice if the investigation cannot be completed in the timeline required by this Code;
  5. Notice of completion of the investigation in a final report; and

1258  
1259 6. A survey about their experience with the complaint system.  
1260

1261 C. The Board shall make information about the complaint available to the  
1262 complainant online.  
1263

1264 D. The complainant shall be provided as much information about their complaint,  
1265 consistent with applicable law, even if some material has to be redacted.  
1266

1267 1. The complaint navigator shall have access to all available records in order to  
1268 best advise the complainant, even information the complainant or their  
1269 support people are not legally authorized to access. Such materials may also  
1270 be redacted to comply with applicable law.  
1271

1272 E. The oversight system shall not charge any fees to complainants for access to  
1273 information about their complaint.  
1274

1275 F. Board communication with a complainant shall not be made by postcard or  
1276 other means of written communication that jeopardizes the complainant's  
1277 privacy.  
1278

**35D.040 Referral of criminal investigations**

The Board has the authority to refer cases to the District Attorney or other authority for criminal investigation when the incident or allegations indicate possible criminal activity by the officer(s). To ensure officers' constitutional rights, in no case shall compelled testimony from officers be transferred by the oversight system.

DRAFT

### **35D.050 Who May File**

- A. Anyone who experiences or witnesses alleged officer misconduct can file a complaint with the oversight system. The right to file a complaint is absolute and unconditional.
1. Parents and guardians may file complaints on behalf of minors up to the age of 18. Minors can file complaints on their own beginning at age 15.
  2. The complainant pool is inclusive regardless of age, immigration status, residence, criminal record, or language used. Incarcerated people can file complaints.
  3. Anonymous complaints will be accepted, and will be placed in priority depending on the nature and severity of allegations and, for more minor complaints, the Board's workload.
  4. Complaints involving any community members can be filed by third parties, such as other individuals or organizations.
- B. Police officers from the Portland Police Bureau can file complaints alleging misconduct by other Portland police officers.
- C. Law enforcement officers from other law enforcement agencies, can file complaints alleging misconduct by Portland police officers.
- D. No member of the community or the Portland Police Bureau shall face retaliation, intimidation, coercion, or any adverse action for filing a complaint, reporting misconduct, or cooperating with a misconduct investigation.

**35D.060 Types of conduct/complaints within Board jurisdiction**

A. The Board shall investigate certain Police actions, including but not limited to:

1. All deaths in custody (including effective/constructive custody) and uses of deadly force;
2. All complaints of force that result in injury, discrimination against a protected class (whether defined by applicable local, state, or federal law), violations of federal or state constitutional rights.

B. The Board shall also investigate allegations of the following to determine if City or Police Bureau policy has been violated:

1. dishonesty/untruthfulness including perjury;
2. false reports & concealing evidence;
3. sexual assaults, sexual misconduct, or sexual harassment;
4. domestic violence;
5. unlawful search/arrest;
6. neglect of duty;
7. discourtesy, including use of profanity;
8. improper discharge of a firearm;
9. criminal conduct, including off-duty criminal conduct;
10. improper or illegal act, omission or decision that directly affects a community member or their property;
11. violation of orders which affect a community member;

- 12.harassment;
- 13.intimidation;
- 14.retaliation;
- 15.force used at protests (to the extent not covered by Section A);
- 16.abuse of authority (such as use of police credentials in a personal dispute);
- 17.officer failure to identify;
- 18.theft of money;
- 19.Corruption (to the extent not covered by other Code provisions);
- 20.membership or participation in hate groups, racial supremacist organizations or militant groups (as defined in ORS 181A.688);
- 21.cases of substantial public interest; and
- 22.where data show a pattern of inappropriate policies.

C. The Board may also investigate:

- 1. Any alleged misconduct directly affecting the public, including work-related allegations such as tardiness if they affect a community member; and
- 2. Other allegations of officer misconduct which do not originate from a complaint, at the discretion of the Board.

D. If the involved officer is within their probationary period and is terminated by the Police Bureau prior to the conclusion of the Board's administrative investigation of the complaint, the Oversight System shall complete its investigation.



1392 E. If a complainant asks the Board not to investigate a case that falls under the  
1393 Board's mandate in the Charter, the Board shall evaluate its legal obligations,  
1394 and weigh the interests of community concerns and the need for justice  
1395 against the wishes of the complainant (and/or their attorney if there is one).  
1396

1397 F. The following types of complaints which are outside the Board's jurisdiction,  
1398 shall be handled as follows:  
1399

- 1400 1. When the complaint involves officers from another law enforcement  
1401 agency, the Board shall ask permission from the complainant to forward  
1402 their complaint to the proper investigating authority to investigate the  
1403 officers' alleged misconduct. If the complainant declines, the Board shall  
1404 dismiss the complaint for lack of jurisdiction and notify the complainant of  
1405 its decision.  
1406
- 1407 2. When the alleged violations do not impact the community, the appropriate  
1408 City investigatory body (such as Internal Affairs) should investigate. For  
1409 example, taking home a police car for personal use would not be  
1410 investigated by the Board, unless that vehicle then runs into another car or  
1411 person or is used for intimidation.  
1412
- 1413 3. When an officer files a complaint against another officer(s), unless the  
1414 complainant officer requests the Board to investigate to ensure an impartial  
1415 review.  
1416
- 1417 4. When a complaint is generated by a Portland Police Bureau supervisor  
1418 about poor member performance or other work rule violations, Responsible  
1419 Unit managers are responsible for intake and investigation.  
1420

**35D.070 Filing Timelines**

- A. The timeline to file a complaint shall be 12 months after the incident except in the following circumstances:
1. The Director and/or designated Board leadership may extend the timeline for good cause; or
  2. until a civil case involving the same underlying conduct has concluded; and/or
  3. for the term of the involved community member's incarceration.
- B. If the timeline is extended for reasons identified in A.2-3, it may be extended to a maximum of five years.
- C. Good cause for extending the timeline may include (but is not limited to) fear of retaliation, or if an officer who was not previously identified has their identity become known after the 12-month deadline.

### 35D.080 METHODS FOR FILING COMPLAINTS; BOARD RECEIPT OF COMPLAINTS

- A. The Board shall ensure that complaints can be filed and received through multiple methods (including but not limited to in-person, by mail, phone, email, online submittal, text message, collect calls, or by other common technological means of communication) to ensure access to the complaint process.
1. The Board shall ensure that complaint forms are widely available.
    - a. All Portland Police Bureau facilities will have complaint forms available in areas accessible to the public.
    - b. All Portland Police Bureau issued business cards intended to be given to community members during calls for service will have the Board's phone number and email address printed on them.
  2. The Board shall offer translation for documents and for verbal communications with appropriate interpretation to be inclusive of people for whom English is not their preferred language, and in accommodation of people with disabilities.
  3. The Board will ask the complainant to state their preferred method of communication at the beginning of the process.
- B. Should a community member contact the Portland Police Bureau or the City's information line (such as 311) or any other City bureau regarding alleged member misconduct, the complainant will be directed to the Board.
- C. The Police Bureau shall inform the Board immediately upon their knowledge that a member has engaged in conduct that may be subject to criminal and/or administrative investigation.
- D. The Board's offices shall be open to accept complaints for longer hours than Monday through Friday, 9:00AM to 5:00PM, including early mornings, weekend times and evenings.

DRAFT

**PROPOSED TITLE: Intake**

**A. The Director shall hire complaint navigators (“advocates”) to help complainants navigate their complaints.**

**1. All complaint navigators shall be trained both on culturally sensitive/competent support for complainants and on sexual assault/survivorship for community members, so that even if someone from the relevant group isn't available when a person calls in everyone can provide support.**

**2. Complainants may request culturally competent/sensitive intake.**

**3. Complaint navigators will be required to receive continuing education.**

**4. Complaint navigators will assist in staff delivery of community education about the complaint process.**

**B. The oversight system will provide an complaint navigator for each community member who files a complaint. To the extent possible, the complaint navigator will be appropriately culturally attuned to the complainant's needs.**

**C. Community members can additionally have two support people including an attorney for a total of up to three support people. However, the support person cannot be a witness to the incident.**

**D. If the complainant is an officer, who already has the automatic ability to have a bargaining unit representative and an attorney provided by their Association or bargaining representative (whichever applicable), they can also bring a peer officer or community member of their choosing (who is not a witness to the incident). This means they may also have as many as three support people.**

**E. If the officer is not a part of the bargaining unit, they will be assigned a complaint navigator from the pool for community members. The officer can decline this option.**

1514  
1515  
1516  
1517  
1518

- F. Interviews will be scheduled around the community member’s work schedule and can be rescheduled if needed. Interviews will include accommodations for people with disabilities, and interpreters, if needed.

DRAFT

**35D.100 Preliminary Investigations; Initial Case Handling Decision**

- A. The Director shall hire an appropriate number of investigators to conduct preliminary investigations, full investigations, and follow-up investigations as necessary and as outlined by this Code and related Board procedures and rules.
- B. When the Board receives a complaint regarding alleged misconduct of a Portland Police Bureau member, staff shall:
  - 1. Assign a case number;
  - 2. Conduct a preliminary investigation (including gathering information about the complaint through an intake interview);
  - 3. Make a case handling decision (i.e., should case proceed to a full investigation; suggested for mediation; addressed by some other means; or dismissed);
  - 4. If appropriate for a full investigation, identify the complainant's allegations; and
  - 5. Communicate to the complainant summarizing the complaint and the case handling decision.
- C. Incomplete complaints can be investigated if the Board determines an investigation is warranted.

**35D.110 Informal Complaints**

- A. If the complainant expresses an interest in resolving their complaint informally through discussion with the officer's supervisor, the Board shall determine whether such resolution is appropriate.
1. The Board shall confer with the officer's supervisor about the possibility of an informal resolution process, and the supervisor shall make a determination whether to resolve the case informally or send it back to the Board for full investigation.
  2. Once approved for informal complaint resolution, a case can be resolved without formal investigation and the complainant will be informed of this decision.
  3. If the case is sent back for full investigation, the Board will inform the complainant.



### 35D.120 Mediation

- A. The Director shall arrange for paid professional mediators on an on-call, part-time or full-time basis.
- B. The Board has the authority to provide for voluntary mediation between community members and law enforcement. There shall be no cost to utilize the mediation option.
  1. Goals of mediation include improving police-community relations and building better policies.
  2. The Board shall determine whether the case is eligible for mediation based on the nature of the allegations and the officer's history.
    - a. The community member shall be able to consult with their advocate and/or their other support persons before deciding whether to agree to mediation.
    - b. Complainants shall not be unduly pressured to choose mediation if they prefer an investigation to take place.
    - c. An officer's supervisor must clear them for approval before the officer can agree to mediation.
- C. Mediation is not offered for complaints involving use of force, profiling, legal violations such as improper stop, detention, search, or arrest, or for officers with a pattern of misconduct. No case identified as an automatic investigation by the Charter shall be eligible for mediation.
  1. Mediation is offered for complaints involving discourtesy and procedural complaints including unwarranted action other than those described in C (above), and neglect of duty.
  2. If the complainant filed the misconduct complaint based on actions during an incident in which the officer filed criminal charges or citations against the community member, once those criminal allegations have been resolved,

1602 mediation about the misconduct complaint can still proceed, consistent  
1603 with applicable law.

- 1604  
1605 3. If there is a civil lawsuit or criminal case pending against the officer about  
1606 the incident, mediation cannot proceed.

1607  
1608 D. The discussions that take place in the mediation are confidential unless the  
1609 parties agree otherwise.

1610  
1611 E. Mediators shall be screened and trained properly about power dynamics,  
1612 cultural awareness, racial bias, and other issues which may underlie the  
1613 incident.

1614  
1615 F. For eligible cases, mediation is an alternative to full investigation.

- 1616  
1617 1. If either party rejects mediation, the case is sent to a full investigation.

- 1618  
1619 2. Either party to the mediation, or the mediator, can determine that  
1620 mediation has not been successful, and ask for a full investigation.

1621  
1622 G. Mediation shall be made accessible to all parties.

- 1623  
1624 1. Upon request, the mediation process will make accommodation for people  
1625 with disabilities, as well as interpreters as needed.

- 1626  
1627 2. To accommodate schedules, complainants can provide adequate notice of  
1628 cancelation on as many as two separate occasions before mediation is  
1629 abandoned.

- 1630  
1631 3. Mediation is available to complainants, as well as to family members of  
1632 people subjected to alleged police misconduct or other community  
1633 members, with the complainant's permission, even if complainants do not  
1634 themselves participate. In situations where the complainant does not  
1635 participate, the outcome of mediation will be binding on all parties.

- 1637           a. Upon agreeing to the confidentiality of the mediation, one support  
1638           person of each party's choosing may attend, but not engage in the  
1639           mediation, to provide moral support and consult during breaks.  
1640
- 1641       4. Mediation shall take place at a neutral location that is mutually acceptable  
1642       to all parties.  
1643
- 1644   H. Successful mediation will conclude with a signed mediation agreement by all  
1645   parties. Violation of the agreement may result in the case proceeding to a full  
1646   investigation and/or other next steps as outlined in the agreement itself.  
1647   Portions of the mediation agreement which could incriminate any party in  
1648   criminal or administrative proceedings will be considered confidential to the  
1649   extent allowed by law. The parties may mutually agree to publicly disclose the  
1650   substance of the mediation agreement.  
1651

### **35D.130 Grounds for Dismissal of a Case Following Preliminary Investigation**

A. After a preliminary investigation, the Board may dismiss the case.

1. If the case is dismissed, the Board will provide notification to the complainant.
2. The Board will also notify the involved officer(s) and their commanding officer once the appeal deadline has passed (see "Appeals" section).

B. The Board may dismiss a complaint for the following reasons:

1. The complaint is only related to criminal charges or alleged violations against the complainant, and does not allege misconduct;
2. The complaint was filed outside the timeline to file and there is no good cause or other grounds to excuse the late filing (see "Timelines to file");
3. Even if all aspects of the complaint were true, no act of misconduct would have occurred;
4. Even if all aspects of the complaint were true, the misconduct would be so minor that the matter would be better addressed through other means;
5. The complainant withdraws the complaint or fails to complete necessary steps to continue with the complaint. It may benefit the community to finish the investigation. However, lack of cooperation and lack of consent from a complainant may make it impossible or inappropriate to complete the investigation; and
6. Lack of jurisdiction (see 35D.060).

C. Notwithstanding its decision to dismiss a complaint under Section B, the Board may initiate potential policy recommendations from dismissed complaints.

- 1687 D. At minimum, for the duration of the *US DOJ v. City of Portland* Settlement  
1688 Agreement, cases alleging excessive force shall only be dismissed under B3  
1689 when there is "clear and convincing evidence" that the allegation has "no basis  
1690 in fact."  
1691  
1692 E. Dismissals based on B3 will be considered for mediation or informal complaint.  
1693

DRAFT

**35D.140 Board Authority to Take Interim Measures**

A. The Board can take interim steps prior to findings being determined in specific cases.

1. A case can be prioritized if an officer is retiring or being promoted.

2. The Board can recommend placing an officer on administrative leave while administrative charges are pending.

### 35D.150 Portland Police Bureau Witnesses

A. Portland Police Bureau sworn officers and supervisors thereof shall attend investigative interviews conducted by the Office, cooperate with and answer questions asked by the Office during an administrative investigation of a PPB sworn officer (or supervisor thereof) conducted by the Office. If an employee refuses to attend an investigative interview after being notified to do so by the Board or Office, or refuses to answer a question or questions asked by the Office during an investigative interview, the Police Chief, the Bureau of Human Resources, or appropriate City authority shall direct the employee to attend the interview and truthfully answer the question or questions asked.

1. In use of deadly force and death in custody cases, the Board's administrative investigators shall coordinate with criminal investigators external to the Board and prosecutors (if applicable). The Board's investigator shall have the ability to compel testimony within 48 hours of the criminal investigators having completed their interview after issuing a *Garrity* notice.

B. To the extent that it is consistent with collective bargaining agreements, the PPB employee shall comply with a request for compelled testimony within 48 hours of the request being made.

C. All Oversight System interviews of PPB employees shall be conducted in conformance with legal requirements and collective bargaining provisions.

D. To the extent that it is consistent with collective bargaining agreements, compelled or requested testimony may be done in-person or in a virtual setting when the Board deems it appropriate.

E. Prior to being interviewed, a PPB employee whose testimony is requested or compelled will:

1. Be notified of the time, date, and location of the interview and that this is an administrative investigation.

- 1741 2. Be informed of the right to bring a union representative to the interview to  
1742 attend the interview, consistent with *Weingarten* and PECBA (as  
1743 applicable). To the extent consistent with the collective bargaining  
1744 agreement, the PPB employee may also bring support persons.  
1745
- 1746 3. Be read a statement (“Garrity Notice”), that the employee is directed to  
1747 attend the interview, cooperate during the interview and answer all  
1748 questions fully and truthfully and, further told that if the employee fails to  
1749 attend the interview, cooperate during the interview or answer any  
1750 questions fully and truthfully, the employee will be subject to discipline or  
1751 discharge.  
1752
- 1753 4. Be asked to sign an acknowledgement that they received the Garrity  
1754 Notice prior to providing compelled statements or testimony.  
1755
- 1756 5. Provided with any other information or protections required by any  
1757 applicable collective bargaining agreement.  
1758
- 1759 F. As provided by this Code, the Board may subpoena a sworn PPB officer (or  
1760 supervisor thereof) who fails to comply with a properly issued written  
1761 interview notice to cooperate with an administrative investigation as described  
1762 in this section.  
1763
- 1764 G. In addition, a refusal of a sworn PPB officer (or their supervisor) to truthfully  
1765 and completely answer all questions may result in discipline up to and  
1766 including termination.  
1767



**35D.160 SUBPOENAS**

- A. The Board shall have the authority to issue subpoenas for the purpose of compelling any witness testimony or the production of documents, photographs, video or audio recordings, or any other evidence necessary for the Board to fully and thoroughly investigate a complaint or conduct a review.
- B. If a witness fails to appear before the Board at the time and date set by subpoena, or in the case of a subpoena duces tecum, if a record is not produced as required, the Board, through appropriate legal counsel, may apply to a court of competent jurisdiction for the enforcement of a subpoena or to impose penalties for failure to obey a subpoena.
- C. In general, initial efforts to compel the testimony of a PPB employee shall be made through the administrative process (and directives). However, should a PPB sworn officer (or supervisor thereof) refuse to comply, the board may subpoena their presence via this Code provision.
- D. Any person who fails to comply with a subpoena will be subject to contempt proceedings as prescribed by State law; provided that such persons shall not be required to answer any question or act in violation of rights under the constitutions of the State or of the United States.

**35D.170 Procedures specific to use of deadly force or death in custody**

A. The Board shall have authority to investigate all deaths in custody and uses of deadly force.

B. When an incident involves police use of deadly force or a death in custody, the Board shall follow these procedures:

1. Oversight System investigators shall head to the scene and shall coordinate with and assist criminal investigators in gathering information.
2. Board investigators may sit in on interviews of witnesses (including officers who are witnesses) that are conducted for the criminal investigation but may not ask questions of involved officers.
3. When those criminal investigation interviews are completed, if there are questions about the possible administrative violations, board investigators will ask questions of witnesses.
4. When those criminal investigation interviews are completed or the officer has postponed their interview, if there are questions about the possible administrative violations, board investigators will ask questions of the involved officers (following issuance of a Garrity Notice).
5. The investigations shall include a review of the supervisors and others who were on the scene, including officers who used force or may have precipitated the use of deadly force.

C. The final investigation will also be sent to the PPB Training Division for an analysis to be presented to the Board at the hearing on the deadly force incident.

D. The community member subjected to use of deadly force, or their survivors if the interaction resulted in death, shall be considered as complainants and

1827 shall have full rights to appeal.

1828

1829 E. In cases in which survivors choose not to file a complaint, the investigation  
1830 shall still be handled in the same way as all other misconduct investigations.

1831

DRAFT

**35D.180 Creation of Hearings Panels**

A. The Board shall create panels (“Hearing Panels”) to hear cases to determine findings about whether policies were violated.

1. Panels shall be no smaller than five Board members.
2. The Board shall ensure more members serve on panels hearing more serious cases than in other cases.
3. Panel assignments shall be made in rotation and in a manner that will ensure the Panel reflects the demographic make-up of the Board to the extent possible. Altogether, the Board shall ensure a balance that allows the Panel as a whole to benefit from the knowledge and expertise of its individual members.
4. Each panel shall have a presiding individual over each hearing. The Board shall develop procedures for the selection of the presiding individual.

### 35D.190 Hearings Panel: Initial Procedures and Preliminary Hearing

- A. Members of the hearing panel shall review all investigative materials.
1. In reviewing the case, the panel may examine any supporting documents, the file and report of the staff, and any documents accumulated during the investigation. They may also listen to and/or watch the recordings of all interviews.
- B. The panel shall hold a preliminary hearing to assess the completeness and readiness of the investigation for a full hearing.
1. The complainant and officer will be notified of the date of the preliminary hearing, but are not required to attend. They may appear with any or all of their support persons.
  2. The Board shall publicly announce, with a case number, the date of a preliminary factfinding hearing at least 7 days in advance of the hearing. This notice shall also include methods by which members of the public who may have information or evidence can contact an assigned investigator.
  3. The Board will decide whether the preliminary hearing will be held in open session or executive session in accordance with existing legal standards and considering the public interest, the officer's preference, precedents set by the existing oversight system, and other relevant factors.
  - ~~3.4.~~ At the commencement of the preliminary hearing, the presiding individual shall state that members of the public who may have additional information or evidence should contact an assigned investigator, prior to the full hearing. The presiding individual may allow members of the public to express their opinion about the readiness of the case, consistent with state law and collective bargaining agreements.
- B. At the preliminary hearing, the panel will decide whether to:

1. Send the case back for further investigation, specifying the information sought; or
  2. Send the case forward to a full Hearing.
  3. Evaluate the case for eligibility for stipulated discipline (per Code Section 35D.220).
- C. The panel's decision on the complaint readiness will be made in open session.
- D. The Board shall permit public comment after the decision.

### 35D.200 Hearing Panel: Hearings Process

- A. The Board may choose to hold hearings on misconduct complaints and investigation. Should it choose to do so, those hearings will be conducted pursuant to this section, subject to and consistent with collective bargaining agreements, Oregon Public Records and Public Meetings laws, state and federal constitutions, and other applicable law.
- B. The Board shall welcome public involvement in this process to the extent consistent with the law.
- C. The hearings shall be recorded.
- D. The Board shall publicly announce, with a case number, the date of a full (fact-finding) hearing at least 7 days in advance of the hearing. This notice shall also include methods by which members of the public who may have information or evidence can contact an assigned investigator.
- E. The Board will decide whether the full (fact-finding) hearing will be held in open session or executive session in accordance with existing legal standards and considering the public interest, the officer's preference, precedents set by the existing oversight system, and other relevant factors.
- F. The complainant and officer shall be given access to the same information as allowable by law. Any information that is provided to the officer but not the complainant shall be shared with confidentiality protections with the complainant's complaint navigator.
- G. Attendees to the Hearing:
1. The complainant can appear with their advocate, as well as a support person and/or an attorney.
  2. The officer can appear with their bargaining unit representative/advocate, and/or their attorney and/or support person consistent with the collective bargaining agreement.

- 1936 3. A person from the upper management of the Police Bureau's Training  
1937 Division shall attend all hearings to answer questions about police policy,  
1938 training, or procedure.  
1939
- 1940 4. Any other witnesses requested by the Panel, complainant, or officer.  
1941 (Witnesses will ordinarily be sequestered until they are called to testify.)  
1942
- 1943 5. Interpreters shall be provided with adequate advance notice for  
1944 arrangements to be made. Other accommodations shall be made for people  
1945 with disabilities. (The Board will develop procedures describing how  
1946 complainants and other witnesses can request accommodation or  
1947 interpreters for a hearing held pursuant to this chapter.)  
1948
- 1949 H. Information submitted during the administrative investigation by parties in  
1950 confidence to the Office shall not be publicly disclosed during the hearing.  
1951 Examples of reasons to keep information confidential include but are not  
1952 limited the need to protect the identity of a victim or private medical  
1953 information. (Other conditions may require subsequent disclosure to the  
1954 officer and their bargaining unit representative or attorney, such as to  
1955 comply with the collective bargaining agreement and the officer's due  
1956 process rights.)  
1957
- 1958 I. All decisions on findings shall still be made publicly in open session even if  
1959 the hearing is held in executive session.  
1960
- 1961 J. Throughout the hearing process, if held in an open hearing, at the officer's  
1962 request, the presiding individual shall remind the audience of the  
1963 seriousness of the employment matter being discussed while  
1964 acknowledging community responses.  
1965
- 1966 K. **Procedure for the hearings** (Note: throughout this subsection,  
1967 "complainant" and "officer" may include their representatives.)  
1968
- 1969 1. The basic circumstances of the case and allegations shall be read into the  
1970 record by the presiding individual (or designee) at the beginning of the  
1971 hearing.  
1972



- 1973  
1974  
1975  
1976  
1977  
1978  
1979  
1980  
1981  
1982  
1983  
1984  
1985  
1986  
1987  
1988  
1989  
1990  
1991  
1992  
1993  
1994  
1995  
1996  
1997  
1998  
1999  
2000  
2001  
2002  
2003  
2004  
2005  
2006  
2007  
2008
2. The complainant and officer can make opening statements; the complainant can choose whether to provide their statement before or after the officer.
  3. The presiding individual begins questions of witnesses, followed by other panel members.
    - a. Except as provided in c, Oversight System staff involved in the administrative investigation can ask questions at the invitation of the presiding individual.
    - b. The officer or complainant can request specific items about which the panel may ask more questions of witnesses.
    - c. Except as otherwise provided here, only the presiding individual shall ask questions of the officer, including on behalf of other people attending the hearing. At the presiding individual's discretion, the presiding individual may designate one panel member or one staff person to question the officer in addition to the presiding individual themselves. However, no more than two individuals may question the officer over the course of the hearing. (ORS 236.360)
  4. Once recognized by the presiding individual, the complainant and officers have the ability to do the following:
    - a. ask questions directly of witnesses (including cross-examining witnesses);
    - b. request that the panel ask additional questions of a witness;
    - c. call additional witnesses;
    - d. introduce exhibits; and
    - e. suggest that the panel impeach witnesses.

- 2009 f. The complainant and officer can offer rebuttal evidence to the  
2010 evidence submitted in the other's case.  
2011
- 2012 5. Once all evidence has been received, the officer and complainant can  
2013 make closing statements.  
2014
- 2015 6. Once closing statements have concluded, the case shall be considered  
2016 submitted. The panel shall deliberate on the evidence applying the  
2017 preponderance of evidence burden of proof. (The panel may convene an  
2018 executive session to confer with legal counsel as needed in reaching its  
2019 findings.)  
2020
- 2021 7. The presiding individual may allow members of the public to express  
2022 their opinion about the case, consistent with state law and collective  
2023 bargaining agreements.  
2024
- 2025 L. Upon completion of its deliberations, the panel will decide its finding(s).  
2026 Where the public interest warrants a discussion of the findings on the  
2027 records, each member may explain their position. Those who disagree can  
2028 include their dissenting information along with the findings.  
2029
- 2030 1. When a decision on findings is made at the end of a public hearing, the  
2031 presiding individual shall explain the next steps, including the appeal  
2032 process.  
2033
- 2034 2. If any finding is made outside the public hearing process where an  
2035 appeal is still possible, or the complainant does not appear at the  
2036 hearing, a Board representative can explain the process or delegate that  
2037 responsibility to staff.  
2038
- 2039 M. Should the panel find that one or more allegation is in violation of Portland  
2040 Police Bureau policy (i.e., outside of policy), the case will proceed to the  
2041 proposed corrective action and discipline phase (as set forth in Code section  
2042 35D.230).  
2043

- 2044 1. Following the decision of the panel, a summary of the panel's findings  
2045 shall be shared in writing (or other means if requested) with the  
2046 complainant and officer(s), consistent with applicable law.  
2047

2048 N. General guidelines for hearings conducted pursuant to this section:  
2049

- 2050 1. Hearings can be held even if parties fail to appear.  
2051  
2052 2. The panel may receive any oral or written statements volunteered by the  
2053 complainant, the involved member, other officers involved, or any other  
2054 person.  
2055  
2056 3. Hearsay is admissible; evidence is allowed if "responsible persons are  
2057 accustomed" to using such information in "serious affairs." However, in  
2058 both cases, the panel shall be entitled to decide to weight of the evidence  
2059 offered.  
2060  
2061 4. When the Hearing process develops new information, the panel may  
2062 consider the new information when determining if additional investigation  
2063 is warranted, but if it chooses not to direct further investigation, the panel  
2064 may not use the new information to determine findings.  
2065

2066 O. The Board shall establish bylaws or rules provisions, guidelines, and  
2067 methods for the processes described in this Code section.  
2068

### 35D.210 Board Burden of Proof and Findings

A. Burden of Proof. Findings are determined using the "Preponderance of the Evidence" Standard as defined in ORS 243.808.

B. In deciding all cases before it, the Board will use a standard set of four options for findings:

1. Out of Policy: meaning the action is found to have violated policy. In some jurisdictions, this is also known as "sustained;"
2. In Policy: meaning the officer's actions were within the law and policy. In some jurisdictions, this is also known as "exonerated;"
3. Unfounded: meaning the evidence shows the alleged events did not occur; and
4. Insufficient Evidence: meaning there is not enough information or evidence to attach any of the other findings.

C. The Board may also add these additional findings related to systemic aspects of the case which led to the interaction that caused the complaint:

1. Policy Failure: meaning the Board recommends that PPB revise its policy;
2. Training Failure: meaning the Board recommends that PPB revise its training;
3. Supervisory ~~Failure~~ Contribution: meaning someone in the chain of command supervising the officer engaged in an action that contributed to the incident;
4. Communication ~~Failure~~ Contribution: meaning involved officers did not communicate well among themselves or information was otherwise not properly relayed by others to the involved officer(s) ; and

2104 5. Equipment Failure: meaning the equipment provided did not function  
2105 properly or was not adequate.

2106  
2107 D. All of these findings shall be applied whether the case is generated by a  
2108 complaint or if the Board investigates as required by City Code and Charter.

2109  
2110 E. These findings shall also be used for consistency by any other body or  
2111 supervisor who investigates officer complaints which do not involve  
2112 community members.

2113  
2114

DRAFT

### **35D.220 Stipulated Findings and Discipline/Corrective Action**

- A. In certain cases, as defined in this Code section, the officer may admit to the misconduct, and the Board and officer may agree to the proposed findings and discipline/corrective action to allow for a more timely resolution. Stipulating to findings and discipline will not reduce the level of discipline imposed. In all cases, the level and degree of discipline/corrective action shall be in keeping with the seriousness of the offense, taking into account the circumstances relevant to the case and consistent with the applicable Corrective Action Guide.
- B. The officer may have up to 7 days following receipt of the Pre-Determination Notice to inform the Board that they will stipulate to the Findings and proposed Discipline/Corrective Action. By stipulating to the proposed discipline/corrective action, the officer waives all four possible avenues of appeal (to an Appeals Panel of the Oversight Board, to the Portland Civil Service Board, through a grievance or through a due process hearing).
- C. The following categories of cases are not eligible for stipulated discipline/corrective action:
1. cases involving alleged use of excessive force including officer shootings and deaths in custody;
  2. cases involving alleged discrimination, disparate treatment or retaliation; and
  3. cases in which the panel which determines discipline/corrective action does not agree to accept the member's proposed stipulation to findings and recommended discipline.
- D. The following categories of cases are eligible for stipulated discipline:
1. First time offenses that would not ordinarily lead to discipline/corrective action of more than one day off without pay (per the applicable Corrective Action Guide);

2. Second time offenses that would only lead to command counseling or a letter of reprimand (per the applicable Corrective Action Guide).

- E. In an investigation involving multiple potential violations, the violation with the highest category from the applicable Corrective Action Guide will be used to determine whether the case qualifies for stipulated discipline/corrective action.
- F. Stipulating to out-of-policy findings and discipline/corrective action does not remove the complainant's ability to appeal any other finding.

### 35D.230 Discipline and Corrective Action

#### A. Guidelines for imposition of discipline; application of Corrective Action Guide.

The following guidelines shall be followed in determining proposed discipline/corrective action and imposition of a final disciplinary action.

1. As established by Charter, the Board has the authority to issue disciplinary action up to and including termination for all sworn members and the supervisors thereof within the Police Bureau.
  - a. Because the Bureau of Human Resources has authority over every city employee, if for some reason the Board is unable to directly impose discipline/corrective action, the Bureau of Human Resources shall enact the will of the Board.
  - b. Discipline may include various consequences for the officer, as well as education-based alternatives to promote a positive outcome and avoid employee embitterment.
2. The discipline imposed must be done in a manner that is consistent with applicable law, collective bargaining agreements, and the applicable Corrective Action Guide ("Guide"), including exceptions that are written into the Guide.
3. In determining the level of appropriate corrective action and discipline, the panel can take into account the officer's individual history consistent with the Guide.
4. The Portland Police Bureau (PPB) may not issue discipline less than what the Board chooses to impose.
  - a. If PPB would like to impose a higher level of discipline, they need to appear before the Board to discuss the reasoning. The Chief or representative will have to describe the aggravating and mitigating factors informing their proposal.



b. The Board has the authority to accept or reject the Portland Police Bureau's proposal after consideration of the aggravating factors presented.

5. The discipline process shall also be consistent with due process and just cause considerations.

a. The state of Oregon defines "just cause" as "a cause reasonably related to the public safety officer's ability to perform required work. The term includes a willful violation of reasonable work rules, regulations or written policies." (ORS 236.350)

b. Due process includes the officer's right to a due process ("Loudermill") hearing. These hearings are required to be administered by the panel prior to imposing any discipline (except in those instances where discipline is stipulated).

1. When discipline is imposed by the Board, a panel made up of Board members shall hold the due process hearing.

2. When discipline is imposed by the Bureau of Human Resources, one or more representatives of the Board's panel shall attend the due process hearing to aid in deliberations.

3. The panel (or the Bureau of Human Resources) shall offer the involved officer a due process hearing (and if applicable a name clearing hearing), with advance notice provided to the officer, consistent with Oregon Public Meetings law and the collective bargaining agreement.

a. If the presumptive discipline for the conduct is termination, and the conduct is considered stigmatizing, the due process hearing shall also serve as a name-clearing hearing.

4. In lieu of holding a due process hearing, the officer may choose to submit a written response.

- 2236 c. In reaching a discipline decision, the panel shall:
- 2237
- 2238 1. consider the evidence presented;
- 2239
- 2240 2. reach a discipline decision that is supported by the evidence and
- 2241 consistent with the Guide;
- 2242
- 2243 3. The evidence relied upon must be substantial, in this process defined
- 2244 as a preponderance of the evidence;
- 2245
- 2246 4. The decision must be made based on the evidence presented at the
- 2247 due process hearing, or on evidence contained in the record
- 2248 (including from the investigative hearing, if applicable) and disclosed
- 2249 to the parties affected consistent with the collective bargaining
- 2250 agreement;
- 2251
- 2252 5. In deciding whether to impose the proposed discipline, the panel
- 2253 must act on their own independent consideration of the law and facts
- 2254 and not simply accept the views of a subordinate (such as staff of the
- 2255 Office) in arriving at a decision; and
- 2256
- 2257 6. The panel should, in all controversial questions, make its decision in
- 2258 such a manner that the parties to the proceeding can know the
- 2259 various issues involved, and the reason for the decision made
- 2260 (consistent with applicable law and collective bargaining
- 2261 agreements).
- 2262
- 2263 B. The Board shall establish, through adoption of bylaws and rulemaking, further
- 2264 guidelines and methods for the processes described in this Code section.
- 2265

### 35D.240 Appeals

#### A. Grounds to Appeal.

1. The complainant may appeal findings from an administrative investigation or investigative hearing (if held), dismissals, or decisions not to investigate.
2. Police officers may also appeal findings, dismissals, or decisions not to investigate.
  - a. Supervisors cannot file appeals on behalf of officers.
  - b. Officers may alternately file appeals with the Civil Service Board or initiate a grievance procedure, which may lead to arbitration pursuant to the collective bargaining agreement.

3. Appeals that involve a request that the Board reopen an investigation will be decided according to applicable law.

#### B. The request for an appeal will include the name of the complainant or officer filing, date of the incident, finding(s) being appealed (if applicable), and reason(s) for the appeal.

1. The complaint navigator provided by the Oversight System shall assist the complainant in filing the appeal form.
2. The board shall supply forms to file an appeal.

#### C. Consistent with applicable law, the Board also has independent authority to reopen cases.

#### D. A request to end an appeal may be made at any time, but withdrawal should be done in consultation with the advocate and may include confidential information. If practical and appropriate, the appeal might still proceed without the complainant.

#### E. Timelines for appeals

1. Complainants have 30 days to appeal from date of issuance of findings, dismissal, or decision not to investigate, but exceptions can be made to extend the timeline.
  - a. The Board may adopt rules for permitting late appeal filings up to 60 days, for reasons including, but not limited to:
    - 1) The complainant has limited English language proficiency; or
    - 2) The complainant needs physical, mental, or educational accommodations.
2. Officers have 30 days to appeal from date of issuance of findings, dismissal and or decision to not investigate, but exceptions can be made to extend the timeline.
  - a. The Board may adopt rules for permitting late appeal filings by officers up to 60 days for reasons including:
    - 1) if they are incapacitated; or
    - 2) unable to receive or send information to the Board through no fault of their own.
3. Until the appeal period has expired, and if an appeal is filed, until there is a final decision by the Board, the Board may not initiate any proceedings to impose discipline. Should the appeal require extension of the time period for completing an investigation and initiating discipline proceedings as outlined in ORS 236.360(6), the Board will comply with its legal obligations in extending the time period.

#### F. Appeals Hearings

1. Appeals will be heard by a different panel of Board members than heard the original complaint, except in cases in which the basis for the appeal is the discovery of new information. In either situation, this will be referred to as an Appeals Panel.
  - a. A certain number of Board members may be assigned to a Board Appeals Committee whose main function is to hear appeals.

- 2338
- 2339 b. If an appeal is referred to the original panel and a member of the
- 2340 original panel is unavailable, a Board member or Appeals Committee
- 2341 member who was not part of the original hearing may be assigned to
- 2342 the appeals hearing.
- 2343
- 2344 c. If there are not enough members of the Appeals Committee for a
- 2345 quorum, other members of the Board who did not hear the original case
- 2346 may be assigned to the hearing.
- 2347
- 2348 d. In the case that an appeal is based on the discovery of new evidence,
- 2349 investigators will confirm the validity of the evidence prior to an appeal
- 2350 hearing.
- 2351
- 2352 e. The Board may select a subset of between 2-5 members to process
- 2353 appeals of dismissals or decisions not to investigate.
- 2354
- 2355 2. At an appeal hearing, decisions by the Appeals Panel on the findings shall
- 2356 be made on a preponderance of the evidence.
- 2357
- 2358 3. Prior to the appeals hearing, all members of the Appeals Panel shall review
- 2359 recordings and all records of the original hearing.
- 2360
- 2361 4. Appeals hearings shall follow the same procedure described in 35D.200; the
- 2362 panel may expedite matters by not repeating information already in the
- 2363 record.
- 2364
- 2365 a. At the start of the hearing, the basic circumstances of the case,
- 2366 allegations and original findings shall be read into the record.
- 2367
- 2368 b. At the end of the hearing, the Appeals Panel may decide:
- 2369
- 2370 1) To recommend further investigation; or
- 2371
- 2372 2) To affirm the original findings, after which the Board staff shall
- 2373 close the complaint based on those findings; or
- 2374

2375 3) To determine a different finding based on the evidence, and refer  
2376 for further disciplinary proceedings consistent with this code, if  
2377 there are findings that the officer violated policy.  
2378

2379 5. Members of the Appeals Panel shall have the same authority to compel  
2380 officer testimony and subpoena witnesses or documents as the original  
2381 Hearings Panel consistent with applicable law and the collective bargaining  
2382 agreement.  
2383

2384 6. Notifications of the appeal outcomes to complainants and officers shall be  
2385 the same as under the Hearings process. All decisions of the Appeals Panel  
2386 are final and no further appeals are allowed through the Board.  
2387

2388 7. Office staff shall schedule appeal hearings in consultation with the Board  
2389 leadership or designee.  
2390

2391 8. *Placeholder for item to be discussed by PAC for potential inclusion.*  
2392

2393 G. Appeals to City's Civil Service Board or Arbitration; Board's Role

2394 1. If an officer chooses to appeal to the City's Civil Service Board, the Hearings  
2395 panel shall receive a copy of the appeal and provide a written statement  
2396 about the misconduct and supporting evidence.  
2397

2398 a. One or more Hearings panel members may attend the Civil Service  
2399 Board hearing, subpoena witnesses, present evidence, and cross-  
2400 examine, consistent with City policy.  
2401

2402 2. If an officer chooses to file a grievance and an arbitration hearing is held,  
2403 the Hearings panel shall receive a copy of the grievance and provide a  
2404 written statement about the misconduct and supporting evidence.  
2405

2406 a. The Hearings panel may have one or more representatives attend the  
2407 arbitration hearing to present evidence and answer questions about the  
2408 findings.  
2409

2410 3. To the extent consistent with applicable law and collective bargaining  
2411 agreements, the complainant will be allowed to attend, or at least remain

2412 apprised of appeals held outside of the Board's direct scope and authority,  
2413 with their advocate assigned until a final decision is made.  
2414

DRAFT

### 35E.010 Policy Recommendations

- A. The Board shall have authority to make policy and directive recommendations including but not limited to the Portland Police Bureau and City Council as well as the inherent or implied authority to take other measures as necessary to effectuate this. As noted in Charter section 2-1007, the City Council is required to vote on whether or not to implement Board recommendations about PPB policies and directives previously rejected by PPB. The Board's recommendations that are submitted to PPB and/or City Council shall be published for public review, including on the Board's website and other relevant platforms.
1. Any recommendation will include an outline of the new policy or policy change being recommended.
  2. The Board shall develop internal procedures for presentation, consideration, discussion, potential adoption or rescission of proposed policy recommendations. The Board's procedures shall be made public.
  3. The Board may request whatever additional materials and research it believes is necessary to help make an informed decision on a proposed policy recommendation. If needed, the Board may rely upon its subpoena powers to compel production of requested information. The Board shall have access and be authorized to attend PPB trainings as observers for the purpose of evaluating, monitoring, and making recommendations to the PPB regarding policy and directives.
  4. The Police Chief, and if necessary City Council, shall consider any policy recommendation referred to the Chief or Council pursuant to Charter 2-1007b and Code Section 35E.020.
- B. In consultation with the Board and consistent with the Settlement Agreement (while in effect and thereafter), the Portland Police Bureau shall establish a schedule and procedure for regular and timely review of proposed revisions to PPB policies and directives for the purpose of ensuring Portland Police Bureau



2451 policies and directives are consistent with best practices, which may include  
2452 recommendations from the Board.  
2453  
2454

DRAFT

**35E.020 Response of Chief; Referral to City Council**

- A. The Chief of Police, after reviewing a policy or directive recommendation submitted by the Board under City Code Section 35E.010, shall respond promptly to the Board in writing, but in no event more than 60 days after receipt of the report. The response shall indicate what, if any, of the recommended policy, directive or procedural changes are to be made within the Portland Police Bureau.
- B. If the Chief rejects a recommendation, or a portion of a recommendation, or fails to respond within 60 days after its receipt from the Board, the Board shall place the matter on the Council Calendar, for consideration and decision by City Council, within 15 days thereafter.
- C. The Council shall consider and vote on a Board referred policy change no more than three months after it has been presented.
- D. If a Board recommendation is approved by either PPB or the City Council, the Board shall monitor and pursue full implementation of the recommendation. This may include continued advocacy, requesting the Chief or designee to attend and brief the Board, and requesting data or reports from PPB to determine the level of progress towards implementation, or any other action the Board decides to take.

**35E.030 Board Proposals Related to Federal and State Law**

- A. The Board may officially endorse legislation/policy ideas and shall have the authority to testify in front of relevant government bodies and communicate its policy positions with employees and elected or appointed officials at any level of government.
- B. The Office of Government Relations shall consult directly with the Board as part of its development of the City's legislative agenda, in a manner equivalent to any other top-level administrative division of the City government.

**35E.040 Collective Bargaining**

- A. The Bureau of Human Resources shall reserve, during negotiations with collective bargaining units representing PPB sworn officers and their supervisors, at least two seats for representatives chosen by the Board.
- B. The City Attorney shall consult with the Board during collective bargaining processes and inform the Board as soon as practicable regarding any potential changes to the police contract(s).
- C. The Board's ability to make recommendations shall include proposals for collective bargaining.

2502 **35E.050 PPB Budget Review**

2503

2504 The Board may facilitate a public review of PPB's proposed budget requests before  
2505 their official submission, and receive public comment to transmit to PPB and the  
2506 City Council.  
2507

DRAFT

**35E.060 Relationship with Other Oversight Entities**

- A. The Board should seek to be a model for other jurisdictions that review and adapt their own oversight systems.
- B. The Board and Office shall maintain a working relationship with oversight entities outside of Portland, to exchange information, best practices, and solutions to barriers faced by entities working on law enforcement oversight.
- C. The Board and Office shall maintain a working relationship with regional, national, and international groups focused on law enforcement oversight, to have access to trainings and conferences that can help the oversight board perform its duties more effectively.